

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

City of Bloomington, Illinois,
Petitioner,

Vs.

Norfolk Southern Corporation, and the State of Illinois,
Department of Transportation,
Respondents.

T06-0110

Petition to (1) increase the amount of minimum pre-emption time provided by the Norfolk Southern Corporation to the City of Bloomington for the traffic signal pre-emption sequence, (2) authorize the use of Grade Crossing Protection Funds for the installation of new warning devices associated with the proposed roadway improvements, and (3) install sidewalks, all at the Martin Luther King Jr. Drive grade crossing (DOT 480 158K, Railroad Milepost 377.34) of the Norfolk Southern Corporation's track in the City of Bloomington, McLean County, Illinois.

ORDER

By the Commission:

On December 20, 2006, the City of Bloomington ("Bloomington" or "City") filed a verified Petition with the Illinois Commerce Commission ("Commission") in the above-captioned matter, seeking permission to increase the minimum preemption time to allow for installation of a new traffic signal near the Martin Luther King Jr. Drive grade crossing (AAR/DOT #480 158K, railroad milepost 377.34) in the City of Bloomington, McLean County. Respondents named in the Petition include the Norfolk Southern Railway Company ("Railroad" or "NS"), and the Illinois Department of Transportation ("IDOT"). The City also requested assistance from the Grade Crossing Protection Fund ("GCPF") for the proposed safety improvement, as well as permission to construct a sidewalk crossing adjacent to the existing roadway crossing.

The matter was scheduled for a hearing before the duly authorized Chief Administrative Law Judge ("ALJ") of the Commission on February 13, 2007. On January 30, 2007, Commission Staff ("Staff") filed an agreed Proposed Order that had been drafted in coordination with the City, NS, and IDOT. The City and NS filed responses providing concurrence to the Proposed Order, and agreeing with Staff's opinion that a hearing would not be necessary; the hearing was therefore cancelled.

PETITIONER'S EVIDENCE

The Martin Luther King Jr. Drive grade crossing of the Railroad's single main track would be located 70 feet from the Martin Luther King Jr. Drive/White Oak Road (Old US 150) intersection once improvements to the roadway intersection were made. The existing Martin Luther King Jr. Drive grade crossing is equipped with automatic flashing light signals, cantilevers, and bells. The average train volume over the crossing is 6 trains per day with a maximum track speed of 49 mph. The four-way Martin Luther King Jr. Drive/White Oak Road intersection is currently equipped only with STOP signs. White Oak Road, which is under McLean County ("County") jurisdiction, has three 12-foot (12') through lanes (1 lane in each direction with a left turn lane) and a posted 45 mph speed limit. Martin Luther King Jr. Drive, which is under City jurisdiction, is a concrete street with five 11-foot (11') lanes (2 lanes in each direction with a left turn lane), a 4-foot striped median, and a posted 45 mph speed limit east of White Oak Road and 40 mph west of White Oak Road.

The City proposes improving the Martin Luther King Jr. Drive/White Oak Road intersection by adding right turn lanes on White Oak Road, improving turning radii, installing barrier median on the west approach of the Martin Luther King Jr./NS crossing, installing a sidewalk at the crossing, and adding traffic signals. Given the proximity of the grade crossing, the railroad warning devices and the traffic signals must be interconnected. A study was completed indicating that 25 seconds of minimum simultaneous preemption time is necessary to accommodate the proposed traffic signal sequence. The work will require the widening of the railroad's crossing, renewal of the warning devices with the addition of gates and Constant Warning Time ("CWT") circuitry installed with an increased warning time. Also, traffic pre-signals will be installed in advance of the crossing due to the limited distance between the Railroad's track and the Martin Luther King, Jr. Drive/White Oak Road intersection. The pre-signals would be mounted on the new railroad cantilever, and maintained by the City or its contractor from a bucket truck.

With the new sidewalks, pedestrian connections would be provided from existing sidewalk west of the crossing to residential areas east along Martin Luther King, Jr. Drive. At the crossing along the sidewalk approaches, pedestrian signs would be installed and maintained by the City.

It is anticipated that the intersection project and traffic signal interconnect work would begin in July 2007, with an estimated eighteen (18) month project duration. The total cost of the project is estimated at \$1,108,187. Funding participation has been secured through Federal and local sources, and participation from the GCPF is requested.

RESPONDENT RAILROAD'S EVIDENCE

Cost estimates for the warning device work, and widening of the crossing have been provided to the City. With the installation of pre-signals on the Railroad's cantilever, the Railroad would require the City and/or its contractor to enter into a right-

of-entry agreement for the construction and maintenance. As part of this agreement, the City or its hired contractor would be required to maintain the traffic signal equipment from a bucket truck (versus climbing the Railroad's cantilever).

STAFF'S POSITION

The project has been reviewed by Staff, and Staff does not have any objections. With the renewal of the warning devices, addition of gates, and upgrade to the circuitry, Staff recommends that the GCPF be used to pay 95% of the installation costs for the crossing warning devices. The remaining costs for the installation of the warning devices, the crossing surface, traffic signals, sidewalk, and associated roadway work should be the responsibility of the City. The maintenance of the warning devices and crossing surface should be the responsibility of the Railroad. Lastly, a Staff representative should be contacted prior to the installation of the traffic signals, so that the signal cabinet and controller can be shop tested, followed by an onsite inspection when the traffic signal is activated at the intersection. Staff should be provided two weeks advance notice to allow for the scheduling of the shop and onsite activities.

COMMISSION FINDINGS

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) The Commission has jurisdiction of the subject matter and parties herein;
- (2) The Norfolk Southern Railway Company is engaged in the transportation of goods for-hire in the State of Illinois and as such, is a rail carrier within the meaning of Chapter 625 ILCS 5/18c-1104(30) of the Illinois Commercial Transportation Law ("Law"), as amended;
- (3) The Illinois Department of Transportation and the City of Bloomington exist by virtue of the laws of the State of Illinois;
- (4) Matters contained in the prefatory portion of this Order are adopted as findings of fact;
- (5) The City of Bloomington proposes an intersection improvement, and the addition of traffic signals to the intersection of Martin Luther King Jr. Drive at White Oak Road (Old US Route 150);
- (6) The traffic signal should be interconnected with the Railroad's warning devices at the Martin Luther King Jr. Drive crossing, which will be upgraded;
- (7) The City proposes that the minimum simultaneous preemption time provided by the Railroad for the proposed traffic signal preemption sequence at the Martin Luther King Jr. Drive grade crossing should be twenty five (25) seconds;

- (8) The City will have jurisdiction over the highway traffic control signals and proposes to install a pre-signal on the eastbound approach of Martin Luther King Jr. Drive by mounting the highway traffic signal head (pre-signal) on a new railroad cantilever signal arm as shown on the City's plan filed with its December 20, 2006 petition;
- (9) The City should construct a sidewalk over the crossing in conjunction with the roadway project , and provide additional "Crossbuck", "LOOK", and "YIELD" signs for pedestrians;
- (10) The total estimated cost for the project is \$1,108,187. A division of costs for the project is noted in the Cost Division Table below. To assist with the upgrades to the warning devices, \$223,490 from the GCPF of the Motor Fuel Tax Law should be allocated with this Order.

- COST DIVISION TABLE -

Work Item	EST. COST	CITY	GCPF	NS	IDOT
Intersection Improvements, including Traffic Signals	\$787,634	(100%) \$787,634 ¹	\$0	\$0	\$0
Widen and Reconstruct Crossing Surface at Martin Luther King Jr. Drive, including a new Sidewalk Crossing	\$85,300	(Surface Materials) \$35,300	\$0	(Labor for surface) \$50,000 ²	\$0
Install automatic flashing light signals, cantilevers, gates and bells all in accordance with the City's plan provided with its petition; and modify constant warning time circuitry designed to provide for a minimum of 25 seconds simultaneous preemption time for the normal operation of through trains at the Martin Luther King Dr. (DOT #480 158K) grade crossing in Bloomington, Illinois	\$235,253	(Remainder) \$11,763	(95%) \$223,490 ³	\$0 ⁴	\$0
Totals	\$1,108,187	\$834,697⁵	\$223,490	\$50,000	\$0

Notes:

1. Amount does not include railroad flagging, which is estimated to be \$450 per day. All bills for railroad flagging bills shall be submitted to the City for reimbursement.
2. The Railroad is responsible for 100% of future maintenance costs associated with the crossing surface.

3. GCPF amount not to exceed \$223,490; any installation costs above the estimated amount of \$235,253 will be divided between the GCPF and the City in the same percentages noted above, upon submittal and review of evidence to support the additional cost and subject to approval by the Commission.
4. The Railroad is responsible for 100% of future operating and maintenance costs associated with the new warning devices, (except for the replacement of the eastbound cantilever, which is discussed in the Ordering paragraphs).
5. The City will utilize Federal Funds to cover approximately 80% of its project costs. Since federal funding is being utilized for the roadway work, and potentially for a portion of the warning device improvements at the subject crossing, all such work will be covered by appropriate provisions of Title 23, Chapter I, Subchapter G, Part 646 of the Federal-Aid Policy Guide adopted Dec. 9, 1991.

(11) the City agrees to contract with a private company or companies to perform the installation, maintenance, and repair work for the traffic signal pre-signal on the proposed railroad cantilever. The City will prohibit its employees or contractor(s) from climbing onto the cantilevered structure, and maintenance will be completed utilizing a bucket truck;

(12) the City agrees to require its contractor(s) and subcontractor(s) performing the work described in this Order to execute and deliver to the NS prior to entering onto the NS's property a Right of Entry Agreement in the form set forth in Exhibit 1 contained in the record herein;

(13) The City has agreed to execute a written agreement with NS in relation to the signal interconnection at the subject crossing; and that agreement is contained in the record herein as Exhibit 2;

(14) the parties agree that all work should be completed within eighteen (18) months from the date of this Order;

(15) Chapters 625 ILCS 5/18c-1702 and 5/18c-1704 require each "person" as defined by Section 5/18c-1104, to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

(14) Any person making a Request for an Extension of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

(15) Any person making a Request for an Extension of Time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing

and Information no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

- (16) Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.
- (17) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is (are) insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the City of Bloomington is hereby granted permission to install a traffic signal at the intersection of White Oak Road at Martin Luther King Jr. Drive, interconnect the traffic signal with the warning devices at the Martin Luther King Jr. Drive grade crossing of the Norfolk Southern Railway Company's track, install a sidewalk, and establish the minimum preemption time provided by the Norfolk Southern Railway Company for the traffic signal preemption sequence at said intersection, and complete the work as noted in the prefatory section and Findings.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall design the warning system for the Martin Luther King Jr. Drive highway-rail grade crossing to provide for a minimum of twenty five (25) seconds simultaneous preemption time for the normal operation of through trains. The Norfolk Southern Railway Company shall be responsible for all future operating and maintenance costs associated with the new crossing warning system.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall widen the Martin Luther King Jr. Drive crossing, upgrade the warning devices, and modify the circuitry, as necessary, to accommodate the City of Bloomington's work, including the addition of sidewalks.

IT IS FURTHER ORDERED that the division of costs for the improvements herein approved shall be conducted as outlined in Finding (10).

It Is Further Ordered that the City or the City's contractor shall install and thereafter maintain all of the highway traffic signals and circuitry, and that such installation and maintenance work herein required by this Order shall be performed using a bucket truck; and that NS shall install and thereafter maintain all of the railroad signals and circuitry herein required by this Order.

IT IS FURTHER ORDERED that the cantilevers installed pursuant to this Order are the property of NS. In the event that the eastbound (pre-signal) cantilever requires replacement for whatever reason, the cost of the replacement and installation of that cantilever will be apportioned as follows: 50% - the NS; 50% the City.

IT IS FURTHER ORDERED that the City's contractor shall be responsible for all traffic signal installation, maintenance, repair and replacement and that NS shall not be liable for any damages to property or for bodily injury resulting from any traffic signal failure or malfunction.

IT IS FURTHER ORDERED that the City or the City's contractor shall notify NS at least seven (7) days prior to commencing the traffic signal installation required by this Order; and shall notify NS prior to performing maintenance work to the traffic signals required to be installed pursuant to this Order.

IT IS FURTHER ORDERED that the City of Bloomington and the Norfolk Southern Railway Company are hereby required and directed to proceed with the project herein approved and in all aspects thereof to conform to the requirements of 92 Illinois Administrative Code 1535.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall file Form 3 of 92 Illinois Administrative Code 1535 of this Commission showing details of the automatic warning device relocation and circuitry relocation and installation herein required and shall receive approval thereof by X-Resolution before commencing the work of relocation.

IT IS FURTHER ORDERED that after the warning system work herein required has been completed, the Railroad shall not take any action which would result in a reduction of the minimum simultaneous preemption time without approval of the Commission.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company and City of Bloomington shall each post a readily visible notice inside their respective warning system cabinets at the aforesaid grade crossing notifying their personnel not to take any action which would result in a reduction of the minimum railroad preemption time herein required without the approval of the Commission. An actual size copy of such notice shall be submitted by the Railroad and IDOT to the Commission's Railroad Safety Program Administrator for approval.

IT IS FURTHER ORDERED that the work herein required shall be completed within eighteen (18) months of the date of this Order.

IT IS FURTHER ORDERED that the City of Bloomington and the Norfolk Southern Railway Company shall at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Bureau of the Commission stating the progress that has been made toward completion of the work herein required. If the project is behind schedule, the report must include a brief explanation of the reason(s) for the delay.

Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, type of improvement, and project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for the management of the project.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall within five (5) days of the completion of the work herein, file National Inventory Update Report Forms with the Commission's Director of Processing, Transportation Division, as notice of said completion.

IT IS FURTHER ORDERED that the City of Bloomington shall, within five (5) days of the completion of the work herein, provide the parties with a notice of said completion.

IT IS FURTHER ORDERED that all bills for work authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit, Bureau of Local Roads and Streets, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois 62764. The Department shall send a copy of all invoices to the Director of Processing and Information, Transportation Bureau of the Commission. All bills shall be submitted no later than twelve (12) months from the completion date specified in the Commission Order approving this Agreement. The final bill for expenditures from each party shall be clearly marked "Final Bill". The Department shall not obligate any assistance from the Grade Crossing Protection Fund for the cost of proposed improvements described in this Agreement without prior approval by the Commission. The Commission shall, at the end of the 12th month from the completion date specified in this Order or any Supplemental Order, conduct a review to determine if any unused assistance from the Grade Crossing Protection Fund should be de-obligated. Upon completion of the review, the Commission shall notify the Department to de-obligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

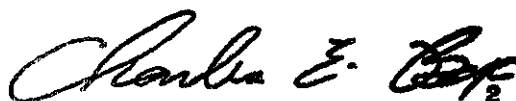
IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders, as it may deem necessary.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 6th day of March 2007.

JUDGE
SECTION CHIEF
<i>ms</i>
ORDERS SUPERVISOR



CHARLES E. BOX
Chairman